

September 3, 2021

The Honorable Thomas A. Varian
 United States District Judge
 800 Market Street, Suite 143
 Knoxville, TN 37902

Dear Judge Varian,

The Asian American Scholar Forum ([AASF](https://aasforum.org/)) is a non-profit, non-political organization representing a community of Asian American scholars who are united in our commitments to promote academic belonging, openness, freedom, and equality for all. Since AASF's establishment in February 2021, we have been organizing educational webinars to raise awareness on issues that matter to the academic community and the general public. The webinars are co-sponsored by 11 Chinese American scholar associations and 2 Asian American organizations, representing over 7,000 Asian American scholars.

We, the AASF members, write to express our grave concern about the Department of Justice (DOJ)'s initial prosecution and subsequent decision to seek a retrial of Dr. Anming Hu, a former professor at the University Tennessee, Knoxville (UTK). Our apprehension is based on the testimonies in your court and our own federal grant application experience, raising serious concerns regarding the way that the government constructed a criminal case against a scientist of Asian descent.

- An FBI agent admitted using false "evidence" to accuse Dr. Hu being a spy for China, based on which the DOJ started a lengthy investigation.
- **Without actual evidence**, the FBI put him and his family under surveillance for 21 months. The false accusation also caused the termination of his tenured employment at the University of Tennessee.
- Dr. Hu appropriately disclosed his collaboration with Beijing University of Technology to UTK.
- The disclosure requirements were not clear during the times Dr. Hu applied for NASA grants.

This information undermines the DOJ's accusation that Dr. Hu concealed his collaboration with a Chinese university while receiving a NASA research grant. Our understanding is that the government failed to prove charges against Dr. Hu beyond

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reasonable doubt, which resulted in a hung jury and your declaring a mistrial.

The scientists of AASF point out that the NASA's Funding Restriction published in 2011 prohibited collaborations with "China or any China-owned companies." It was not clear if the definition of "collaboration with China" includes academic collaborations with a scientist employed by a Chinese university. As such, before 2018, many universities required the PIs for NASA grant applications to only disclose any collaborations with "Chinese Government or any China-owned companies." According to a report written by Jamie Satterfield published on Knoxville News Sentinel on June 14, 2021, "Testimony has shown UTK officials told Hu and all its research personnel the NASA restriction didn't apply to its 'faculty, staff and students' because they are not 'entities of China.'" [2]. At the time of the initiation of the DOJ China Initiative in November 2018, many universities revised their NASA grant disclosure forms, where collaborations with Chinese Universities are included in the prohibition list. According to the indictment dated on February 25, 2020, UTK submitted two proposals to NASA on behalf of Dr. Hu: one for \$60,000 on September 27, 2016, and another one for \$50,000 on August 28, 2018. Both proposal submission dates were before the launch of the China Initiative in November 2018. We respectfully ask you to look into this fact and ensure fairness to Dr. Hu.

AASF is deeply concerned with the DOJ's enhanced scrutiny of Dr. Hu and many ongoing cases against scientists of mostly Asian descent under the China Initiative. These cases are based on the notion that malicious intent to engage in espionage activities and loyalty to a foreign government are the only explanation of the errors and omissions in federal research grant applications, **without actual espionage evidence**. Furthermore,

- Many previous collaborations with Chinese scientists were encouraged by the government and university administrations before the China Initiative (e.g., NSF had a Beijing office for collaboration with Chinese NSF until Feb 2018).
- The disclosure rules of federal agencies are complex and prone to errors and misinterpretations. The government only started making them clear, as Dr. Eric Lander, President's Science Advisor and Director of the Office of Science and Technology Policy, proposed in his article [1] on August 10, 2021.

It is unfair for scientists to be prosecuted for failures to disclose encouraged activities when the federal agencies' disclosure rules were not clear. Many of these prosecutions appear to be based on the principle of presumed guilty until proven

innocent. Asian American scientists have been targeted and affected disproportionately.

We share the U.S. government's concerns that foreign governments, including the Chinese government, are trying to illegally obtain intellectual property from our country, sometimes involving persons originally from those countries. However, such concerns are not the reasons to depart from the fundamental values that define our beloved country. We strongly object to decision making in criminal prosecutions influenced by bias (including based on race, ethnicity, and/or national origin) and criminalizing what may have been innocent mistakes.

Thus, we respectfully request that Dr. Hu receive fair treatment and that the case against him be dismissed.

Sincerely,



Yasheng Huang, President

Kai Li, Vice President

On Behalf of Members of the Asian American Scholar Forum,
<https://aasforum.org/members/>

[1] Eric Landar, "Clear Rules for Research Security and Researcher Responsibility", The White House Briefing Room, August 10, 2021,
<https://www.whitehouse.gov/ostp/news-updates/2021/08/10/clear-rules-for-research-security-and-researcher-responsibility/>.

[2] Jamie Satterfield, "With spy case a bust, feds seek fraud conviction against University of Tennessee professor", Knoxville News Sentinel, June 14, 2021,
<https://www.knoxnews.com/story/news/crime/2021/06/15/jury-deliberates-fate-ex-university-tennessee-professor-falsely-accused-spy/7685206002/>.

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FROM:

Asian American Scholar Forum
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TO: Honorable Judge
 Thomas A. Varian

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SEP 07 2021

Clerk, U. S. District Court

Label 228, March 2016

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